



SATURDAY, - DEC. 7, 1895.

# THE COURT SILENT.

(CONTINUED FROM FIRST PAGE.)

On Wednesday morning, Nov. 27, Judge Mann then devoted his time to the discussion of the non-pro-tem order which he desired entered upon the record. He made a plea for the good name of the court.

In closing he asked the court to consider Pokey Barnes case as though she was the proudest lady in Virginia, clothed with all the virginal essence of pure womanhood with the facts ascertained.

There was a hushed stillness when Hon. George D. Wise, the senior counsel in the case, made the closing argument in this celebrated case.

His voice was clear, eyes as piercing as an eagle's, with skill unparalled, judgement unparalled he pleaded for the three men who held the lives of three human beings in their hands.

Mr. Wise's pile of law books lay before him as he said: "May it please your honor, the gentlemen upon the other side have made complaint that we have been outside of this record. That we are dependent upon the orders of the Governor. The speech made upon facts entirely outside of the record."

More than half the time has been taken in the discussion upon what your opinion would be if that record contained what it does not contain. They charge us with going outside of the record. It does appear that they would bring us to judgement on what might have been and strangle us to death with non-pro-tem orders."

WHAT HE WOULD ASK.

I promise your Honors that I shall ask nothing at the hands of this court which is not demanded by justice. I promise the gentlemen there, I shall depend upon no affidavits, that I shall stand upon what is here certified as the action of the county court in Lunenburg in the trial of these prisoners.

THE CASE RECAPITULATED.

On the 14th day of June last, the peals of a bell sounded at the Court house, there to witness the evidence of a foul murder. Pokey Barnes, Mary Abernathy and Mary Barnes gathered there with the neighbors of Mr. Pollard and assisted in washing the blood of the body from the body of the murdered lady. There was one who was not there, the coward soul of the perjured Marable. He was not there. He could not look upon the mangled body of his victim. They were tried and convicted and here is a record of their conviction.

THE FIRST ASSIGNMENT OF ERROR.

The first assignment of error on page 3rd of the petition is that while your petitioner was jointly indicted, she was tried separately without electing so to be tried. See section 4027.

The Attorney-General in his argument which he addressed to the court yesterday seems to understand that our complaint is that the severance in the trial of the three women was made without the motion of the counsel for the commonwealth or the prisoners.

DID NOT SEE THE POINT.

He did not understand the point we made, if he did, he did not attempt to answer.

THE LAW NOT COMPLIED WITH.

As the record does not show that it was done, he presumes that it was done by the commonwealth. The records are silent. But that is not the point. Mr. Wise called for the C. de of Virginia.

That is where there is a joint indictment the clerk of the court shall issue a joint venire facias for all of them. Did he do it? That is a command contained in the statutes of Virginia. Whether afterwards they were separated or not, wherever there is a joint indictment the command of the statute is that there shall be issued a joint venire facias for all of them. Did he do it? The record does not only show it, but it shows it was not done. An express provision of the statute was disobeyed by the County Court of Lunenburg.

EMANELLING THE JURY.

Mary Abernathy was tried first. A more dark proceeding was never seen in criminal cases a joint indictment is clearly marked out by the statute of Virginia. Section 4028 was read.

He showed that persons who elect to be tried jointly shall be allowed to strike from the panel not more than four. Section 4028 was read and explained.

He showed that the Commonwealth Attorney could not elect that they may be tried jointly or separately. Now your honor, if this statute had been obeyed as the statute required, Mary Abernathy ought to be tried by a jury selected from that panel and not by the jury selected to try Hurt and Wilson.

Your Honors know that new trials have been awarded upon errors much less than that.

The Attorney-General says that error has been committed by another section 3156. He read the section concerning irregularities.

It is not complaining of any irregularity. We are not saying that it is irregular. We are complaining that this was a violation of the command of the statute, that Mary Abernathy was not tried by a jury that the law said she should be tried by, and her jury was given to Pokey Barnes.

It is the part of the record and the non-pro-tem order not need propose to reach it and can't reach it.

THE SECOND ASSIGNMENT OF ERROR.

The second assignment of error if your Honor's will look at page 14, you will find here stated: Section 4023 of the code provides that in every case of felony there shall be selected from the persons summoned as aforesaid a panel of sixteen persons free from exception. The record does not show that such a panel was selected but that sixteen were elected.

Now Section 4018 provides as I have already said what the venire facias shall contain.

Section 4023, when they have been summoned provides how the panel shall be constituted. There shall be sixteen persons free from exception or in other respects qualified.

If the venire fail to contain the persons to the office that the persons must be qualified then it is defective.

The record must show that the persons selected were, as the law requires free from exception.

You can't presume that they were free from exception. There is nothing more important to the accused than obedience to that statute.

There is nothing more important to the accused than that the persons who sit in trial upon him shall be free from exception.

If by the passage of the section 3156 referred to by the Attorney-General the error was cured then it would not be necessary to argue the question.

THE THIRD ASSIGNMENT OF ERROR.

I come to the 3rd assignment of error on page 5 of said petition.

I might as well say that the reference that Judge Mann made in Lunenburg's case does not touch the point raised here.

We say that the record does not show either adversely or by implication that the jury that tried these prisoners when adjournment occurred were placed in charge of any officer of the court.

He read an extract from page 16, of the petition and continuing I call your attention to the bottom of the 16th page. On the last day when the jury retired to their room. At that time the most important to the trial of these women, if at any time the jury should be kept apart from the outside world.

A Doctor Surprised.

On Friday night, the 22nd the palatial parlors of our popular Dr. and Mrs. Diamond were thrown wide open and a light. The scene was a surprise led by some of our leading matrons and maidens and many of our friends. A mandolin and guitar duet by Miss Hattie and Walter Wallace was well rendered. A special programme was carried out. Dr. R. E. Jones as master of ceremonies. An instrumental solo by Mrs. J. E. Jones was heartily enjoyed. Mrs. Hunt and Miss Halkenny recited quite difficult selections with much ease and culture, which was heartily appreciated by those assembled. A mandolin and guitar duet by Miss Hattie and Walter Wallace was well rendered. A special programme was carried out. Dr. R. E. Jones as master of ceremonies. An instrumental solo by Mrs. J. E. Jones was heartily enjoyed. Mrs. Hunt and Miss Halkenny recited quite difficult selections with much ease and culture, which was heartily appreciated by those assembled. A mandolin and guitar duet by Miss Hattie and Walter Wallace was well rendered.

A so-called unknown character then appeared on-costumed, who was both singing and dancing. He seemed like a mockery to require or determine to take notice of such an error when it is known that these ignorant women were protected by no counsel. There was no body there to make objection. He cited Lord Hale, showing that a jury ought to be kept together. Lord Kenyon celebrated case of Rex against Stone was quoted.

This has been uniformly followed by all of our American courts. The doctrine laid down in England has been recognized in this country that juries in felony cases during adjournments must be in the custody of a sheriff. And it has always been the practice that the officer accompanying them must be sworn not to speak to them himself or to permit any one else to speak to them.

In this principle of law is sanctioned both in English and American jurisprudence. It has never been before our courts except in one case—the case of Leigh. The Attorney General referred to it. In that case the facts cited here did not arise. The record shows that the prisoner had been committed to the custody of the sheriff and the record fails to show that a special officer had been administered to that officer.

I want to read the dissenting opinion in that case on the point as to whether a special officer should be administered.

THE FOURTH ASSIGNMENT OF ERROR.

On the fourth assignment of error the Attorney General took the position that as the evidence in the case was being before this court, the court could not determine whether the instructions were erroneous or not.

In reply to the question—Are the instructions in the record? Mr. Wise the able attorney gave the laconic reply, "They are here certified under the seal of the court."

I call your honors attention to the fact that the Attorney General had read the instruction he gravely said that as the evidence was not here the court could not pass upon them. He refers to the plea of alibi. I never heard any such plea since I've been practicing at the bar.

They don't say here that if a party attempts to prove an alibi the burden is upon the prisoner. The court instructs the jury that the burden is upon the prisoners to prove an alibi. The burden is upon the prisoners to prove nothing. It is upon the commonwealth.

HAD NOT READ THE DECISIONS.

The gentlemen upon the other side, both of them claim that the motion for a change of venue ought to have been preceded by a motion to obtain a jury from another county. I hardly think the gentlemen had read the decision of the Supreme Court of Appeals in Wormley's case. This can be done with or without a motion. So that under our statute it is something proper that the judge should grant a change of venue without a motion. On this point, we have the authority of our Supreme Court.

If such a case was suggested existed, then the venue ought to have been changed. While it was left to his discretion it was not a personal, but a judicial discretion, and any failure to do it makes his action subject to review by this court.

SHOULD BE HELD SACRED.

In our Bill of Rights are enunciated certain principles which should be held sacred and inviolable. It has cost oceans of Anglo-Saxon blood to secure them and they will not be surrendered without a long and determined struggle. If the escape punishment that the principles should be overthrown by their violation.

I have asked the question whether there was good cause why the judge should have changed the venire without motion.

We have a letter from the judge and the commonwealth's attorney. It may be said that it is now to be considered by your Honors.

A Grand Lecture.

Last Monday night at the Ebenezer Baptist Church was the occasion of a lecture long to be remembered. Prof. W. A. Mitchell, one of the Richmond school teachers delivered it. Subject: "Don't be in a hurry to marry."

The professor was master of the subject and held his audience spell-bound and at times was greeted with outbursts of laughter and loud applause. Never before have we listened to a lecture where all present agreed with him for having pictured so plainly the reasons why you should not be in a hurry to marry.

The Junior Choir of the Ebenezer Baptist Church rendered some of its fine ly selected music. The solos were extremely fine. Miss Nelly Sears accompanied the choir.

Much credit is due the committee, Messrs. Braxton, Robert H. Thurston and Samuel Baker of Improvement club, No. 1, who returned many thanks to the audience.

TAKE NOTICE!

Alumni Association Normal School.

Peabody's Moral Philosophy has been selected as the branch of study for this session. The members are expected to provide themselves with the same and be prepared on the first 50 pages, (to Source of Knowledge) by the next meeting, 8 Monday morning, December, 5 o'clock P. M. They can be purchased of Arthur Hind & Co. No. 4, Cooper Institute, New York. Price, 90¢, new; second hand, 60¢.

Graduates of this school are cordially invited to be present to any of our meetings, with a desire that they may deem it advisable to become members. Joining fee \$1; quarterly dues \$2.50.

Annual Business Meeting, December, 5 o'clock P. M., at the Literary Association.

4026-Smo

IN MEMORY

Of the Late Harriet B. Taylor, W. G. T. Deputy that Died in Full Triumph of Christian Faith in Hampton, Va., November 24, 1895.

She falls in the army, her face towards the King.

Though pierced by Death's arrow she felt not the sting;

We all stood around her, so well was she loved,

While all were lamenting, her soul went above.

We all must follow, for here we can't stay;

Who knows but our summons are now on its way;

Dear friends daily falling, relations grow few,

The old must relinquish their places to the new.

For long we have known her, for years we have met;

Those pleasant communions we'll never forget;

Her manners so cheering, her kindness so true,

Her warm, natural greeting was equalled by few.

So dear was she cherished by near and by far,

She met in large bodies without wrangle or jar,

She'd greet her societies in true Christian love,

She'd talk much of Heaven—her hopes were above.

To help on the Gospel was her greatest aim,

To own her profession she was never ashamed.

Gone home, worthy sisters, she'll meet us no more,

All earthly communion forever is o'er.

No more will she help us in giving a degree,

She gave up these emblems and gone out to sea.

She has crossed that great ocean and reached that blessed shore,

Has entered that happy Lodge to come out no more;

We think we behold her so plain in our mind,

Approaching that Temple with grand halting sign.

Hosanna to Jesus, who forgave all sin,

Ten thousand grand Matrons escorting her in.

While hundreds assembled to lay her away,

The great solemn day,

The priest, kneeling down for a her youth,

As a true christian lady, and as a woman of truth.

Respectfully submitted by Keturah Tent, No. 21, Richmond.

ANN M. GRIFPIN, P. G. S. M., ISABELLA GRAY, P. S.

ODD FELLOWS' BAZAAR

Richmond Patriarch No. 6 G. U. O. of T. will continue Monday and Tuesday nights in next week at New Odd Fellows Hall N. 3rd St. We thank the public for previous patronage and exceeding good order. Come out Monday and Tuesday and buy your Xmas presents for little folks and old folks. Prices from 10¢ to 50¢.

The ladies visit; Mrs. Mary Smith, C. W. Young, Gertrude Hope, Mrs. Yates Mildred King, Mrs. Fields and others will gladly serve their friends. The teachers contest for book case and the double barrel shot gun is very exciting. Voting contest closes Tuesday December 10th.

C. W. Young, Chairman, M. DEAN, Secretary.

FIRST BAPT "HUBBARD" COLLEGE, (14th Street, between Broad and Marshall) Sunday-school, 9:30 a. m.; preaching—summer months excepted—11:30 a. m.; 3:30 and 8 p. m. (communion, the second Sunday in each month business-meetings, 1st and 3rd Mondays, 8 p. m.; 1st and 3rd Mondays, 8 p. m.; prayer-meeting every Wednesday evening at 8 o'clock; choir practice every Friday evening at 8 o'clock. Christian Endeavor meeting, Tuesday at 8:30 p. m., and Wednesday at 8:30 p. m.

J. H. "OLMES, Pastor. B. P. VANDERVAAL, Clerk.

—Yes, we want your job work. Send it to us, and we'll do our best to please you.

Ox Marrow, Osiline, and STRAIGHTENING IRONS. FOR SALE BY Mrs. L. WILDT, 319 E. Broad St.

IN THE ART OF MERCHANDISING THERE ARE ALWAYS

Make-Believers

by the side of the merchant that makes every endeavor to conscientiously serve his patrons well and proper. The one advertises events of the store news full of useful interest to the public, the other advertises to "Draw Trade," the tendency of which is to abuse public credulity. If you have had experience in shopping tell your unwary neighbor of it.

The Cohen Co.

RETAILING FROM A WHOLESALE STOCK.

THE STORE IS MAKING A NEW RECORD FOR ITSELF.

Price-worthy trophies from every land. The finest and most expensive, the cheaper and common-place side by side on basis of reliable lowest prices. You are needed in every corner of the store. Here are a few price-helms. They'll only speak of one out of hundreds in every department.

Hundreds of sorts of ladies', Men's and Children's Knit Underwear. 10 sorts, including grades sold all over town up to 50¢. These 25¢, up to \$1 each, when the price asked for them as we know them elsewhere is \$1.75.

There is a turn of newness in WREATHS that is difficult to keep up with. Many merchants don't. New ones every-day here.

New Astrachan Cloth Coats, for \$12.50. New English Kersey Coats, \$11.50. The price of this grade of material two weeks ago; these \$8.

New Astrachan Boucle Coats, \$12.50 a week ago; now \$9.35.

English Pilot-Clout, a most stylish new design, \$17.25 two weeks ago; now \$15.50.

New Buttery Coat, Prown or Black, grade of Kersey that sold for \$11.50 a week ago; now \$9.75.

Normandy Coats now, lamb's wool, and the price \$11.50.

Misses' Coats, were \$8.50; now \$4.50.

Misses' Quirly Astrachan Jackets, Navy or \$11.50; Fastry Two-Tone for \$12.50; from \$17.

Baltic Seal Capes, full sweep, and 37 inches or 50 inches long, now \$14; at 9 o'clock.

these two weeks ago \$22. Consey Fur Capes, brilliant French dyed, for \$562; heretofore price \$9.

Children's New Fancy Reefers, were \$4.98; now \$2.98.

This store helps you without risk of paying overvalue for anything. Isn't this a comfort?

Toy Laundry Set consisting of 5 pieces 10¢.

Girls' Toy Pantry and Kitchen set containing 14 pieces, put up in neat box 5¢.

Enamel and Blackboard combined strongly made, 25¢.

Boys' Desk and Blackboard, large size, very strong, well finished, 99¢.

Gray Rocking Horse, with hair & mane well finished, and very strong 98¢.

Children's Doll House, 18 inches wide, 18 inches high, 2 rooms, highly lithographed, a regular \$2.97, 98¢.

Stem Upright Engines, with brass boiler, large size drive-wheel 88¢.

Model Of United States Cruiser, complete, with 14 inches and Sallors, Length 14 inch 10 inches, Highly Lithographed; Special for One Day 20¢.

1,000 Toy Ten-sets to-day at 3¢. Ready at 9 o'clock.

Child's Dongola Button 5-8 50¢. All solid.

Child's Dongola Button 8-10 75¢. All solid.

Misses Dongola Button 11-12 \$1.00.

Boys Buff and Split Lace Shoes, \$1.00.

Also all of the latest styles for Ladies and Gentlemen ranging in prices from \$1.00 to \$6.00. Give us a trial.

Remember WE SELL TRUNKS at wholesale prices.

DBNEY & SAUNDERS,

Corner Third & Broad Streets, Richmond, Va.

Why

Continue to Buy Cheap Shoddy

Shoes for School Children

WHEN WE CAN SELL THE BEST FOR JUST A LITTLE

MORE?

We also give a nice Tablet with Every pair of school shoes.

Child's Dongola Button 5-8 50¢. All solid.

Child's Dongola Button 8-10 75¢. All solid.

Misses Dongola Button 11-12 \$1.00.

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DBNEY & SAUNDERS,

Corner Third & Broad Streets, Richmond, Va.

One Woman Said To Another Woman:

"Whenever I want anything in the house-furnishing line, I always go to CAUDLE & ROANES, because they sell me what I want—don't try to shove off something else if they don't happen to have what I wish to buy; and then again, they have such a varied assortment. Then there is another reason: I don't always happen to have ready cash, and I can buy there anything I want without being compelled to pay a larger amount simply because I don't possess so much of this world's goods as my neighbor. In a word, it is the most satisfactory store one can buy FURNITURE or CARPETS or HOUSEHOLD FIXINGS."

Isn't that praise? We try to deserve it. Cash or Credit—That's the way we sell.

CAUDLE & ROANE, Neither East Nor West, Exactly Opp. Foushee.

BRANCH STORE, 420 WEST BROAD STREET.

J. E. CAUDLE & CO.,

Repairers of Electric Motors and Dynamos, Bicycles, and a kinds of machinery. Electric Fans, Call-bells, Burglar Alarms, Automobiles, and Short Distance Telephones put in at shortest notice. All work guaranteed and promptly attended to. Give us a call.

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